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Oceans and the law of the sea: oceans and the law of the sea

Letter dated 19 September 2014 from the Permanent Representative of the Philippines to the United Nations addressed to the Secretary-General

Upon instruction from my Government, I have the honour to transmit herewith the position of the Republic of the Philippines concerning the peaceful settlement of the dispute in the South China Sea (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the sixty-ninth session of the General Assembly, under agenda item 74 (a).

(*Signed*) Libran N. **Cabactulan**
Permanent Representative

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Annex to the letter dated 19 September 2014 from the Permanent Representative of the Philippines to the United Nations addressed to the Secretary-General

Philippine proposal

Triple Action Plan: a three-step action plan to address the South China Sea issue

What is the situation in the South China Sea?

The South China Sea is seeing an increased pattern of escalating tension that seriously threatens the peace, security and stability in the region. Among these developments are the following:

1. Illegal restrictions on Bajo de Masinloc (Scarborough Shoal) since 2012;
2. Massive reclamation activities and significant destruction of marine environment in Johnson Reef, McKennan and Hughes, Cuarteron Reef and Gaven Reef;
3. Blockade against the resupply of provisions to Philippine personnel stationed in Ayungin Shoal (Second Thomas Shoal) and harassment of Philippine fishermen and local officials with the use of force and threats of use of force;
4. The issuance of new fisheries regulations in Hainan;
5. Violations of safety zones of the Galoc Oil Field, an ongoing operational Philippine oil platform located 60 kilometres (37 miles) north-west of the Philippines' Palawan Province;
6. The imposition of a fishing ban in some parts of the South China Sea from 16 May to 1 August 2014;
7. HD981 oil rig in the waters off Viet Nam and the use of force;
8. Air defence identification zone in East Asia and threats of a potential air defence identification zone in the South China Sea.

All of these developments violate international law, including the United Nations Convention on the Law of the Sea, and are contrary to the 2002 Association of Southeast Asian Nations-China Declaration on the Conduct of Parties in the South China Sea.

Why is this happening?

The core issue is China's position of "indisputable sovereignty" over nearly the entire South China Sea that is represented by the nine-dash line. This is an excessive and expansive claim which is a gross violation of international law.

Because of the lack of legitimacy of the nine-dash line claim under international law, there is a view that China is accelerating its expansionist agenda and changing the status quo to actualize its indefensible claim to nearly all of the South China Sea. The expansionist agenda is being fast-tracked prior to the

conclusion of the code of conduct of parties in the South China Sea and the handing-down of the arbitral award.

It is in the interest of the international community to ensure that the rule of law is protected whenever confronted by forces that do not respect it. The international community must uphold the rule of law for the sake of global peace, security and stability.

There is a need for urgent action to reduce the rising level of tension in the South China Sea. These tensions have strained relations among countries, increased levels of mistrust and heightened the dangers of unintended conflict in the region.

What should we do?

In order to immediately do what is right in accordance with law, the international community must take determined actions to reduce tensions as we urgently work to resolve the dispute in the South China Sea.

Towards this end, the Philippines proposes the Triple Action Plan, a positive, constructive and comprehensive framework that brings together various initiatives that have been put forward publicly on the issue of the South China Sea in recent years.

Specifically, the Triple Action Plan contains approaches that can be pursued simultaneously — (a) an immediate approach; (b) an intermediate approach; and (c) a final approach — to address the provocative and destabilizing activities in the region without prejudice to existing territorial claims.

Immediate approach

There is an urgent need to immediately cease destabilizing and provocative actions. All countries should be able to support this imperative for the sake of peace and stability.

The Philippines, therefore, proposes the calling of a cessation of activities that escalate tension pursuant to paragraph 5 of the 2002 Declaration on the Conduct of Parties in the South China Sea, which calls for: (a) the conduct of self-restraint; (b) no inhabiting of uninhabited features, including massive reclamation; and (c) handling differences in a constructive manner.

Intermediate approach

During the cessation period, there is a special need to manage tension until a final resolution can be obtained.

The Philippines reiterates the call for the full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea and the expeditious conclusion of the code of conduct.

Final approach

There must be a settlement mechanism to bring the disputes to a final and enduring resolution anchored in international law. The Philippines is pursuing such a resolution through arbitration.

The Philippines believes that the arbitration award will clarify the maritime entitlements for all parties, which will be the basis for the settlement of maritime disputes.